



June 1, 1999

Mr. Clay Grover
Feldman & Rogers
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR99-1497

Dear Mr. Grover:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123750.

You represent the Fort Bend Independent School District (the "district"), which received a request for a copy of all the contracts between the district and Pensions Consultants and Administrators, Inc. ("PCA"). You explain that the contracts requested incorporate the PCA bid proposal. You and PCA have each identified portions of the requested records as "commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision" under section 552.110 of the Government Code.

Section 552.110 provides an exception from disclosure for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Section 552.110 refers to two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 at 2 (1991). In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110, and that we would rely upon the reasoning set out in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). However, this interpretation is inconsistent with a case recently decided by the Third District Court of Appeals, in *Birnbaum v. Alliance of Am. Insurers*, Nos. 03-97-00660-CV & 03-98-002-8-CV, 1999 WL 314796 (Tex.App.-Austin, May 20, 1999, n.w.h.). That decision states:

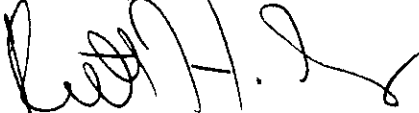
We reject the *National Parks* rationale. Section 552.110 is certain and clear in its reference to information made confidential or privileged by statute or judicial decision. Appellees' contention that *National Parks* is a judicial decision within the meaning of section 552.110 is without merit in our view.

Birnbaum v. Alliance of Am. Insurers, Nos. 03-97-00660-CV & 03-98-002-8-CV, slip op. 31 (Tex.App.--Austin, May 20, 1999, n.w.h.).

Although both you and PCA argue that the information at issue is confidential under the commercial or financial information aspect of section 552.110 and cite to *National Parks*, you have not shown that the information at issue is confidential by judicial decision or statute. Thus, we conclude that the records at issue are not protected from disclosure under section 552.110 and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 123750

Encl. Submitted documents

cc: Mr. Louis H. Geigerman
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(w/o enclosures)

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